



## Proposed Regulation Agency Background Document

<b>Agency name</b>	Board for Contractors
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 50 -22
<b>Regulation title</b>	Board for Contractors Regulations
<b>Action title</b>	Amendment to add pre-license education
<b>Date this document prepared</b>	December 13, 2006

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.*

The Board for Contractors (the Board) seeks to amend its current regulations to implement new pre-license education requirements as mandated by Chapters 454 and 475 of the Acts of the General Assembly, approved March 31, 2006 and promulgated as emergency regulations by the board on August 21, 2006.

These proposed regulations amend sections of the regulations regarding to entry requirements for Class A, B and C contractors, adding the requirement of successful completion of board approved pre-license education for the Designated Employee or Responsible Management. A new section (Part VI) is added to the regulations to provide eligibility and reporting criteria for education providers and education courses.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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As provided in Chapters 454 and 475 of the 2006 Acts of the General Assembly, § 54.1-1102 of the Code of Virginia was amended to require that the Board promulgate regulations adding pre-license education to the eligibility criteria for licensure as a contractor.

Section 54.1-1102 of the Code of Virginia provides the authority for the Board to promulgate regulations for the licensure of contractors in the Commonwealth. The content of the regulations is determined at the discretion of the Board, but shall not be in conflict with the purposes of the statutory authority.

### Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

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In order to protect the public from inexperienced, irresponsible or incompetent contractors, the Commonwealth initiated the licensing of those performing work in the construction industry in 1938. The purpose of amending these regulations is to add a requirement that a member of Responsible Management or the Designated Employee of an applicant successfully complete a business education course as a prerequisite for licensure as a contractor. The implementation of this requirement and the amendment to the regulations should result in a decrease of violations of the standards of conduct set forth in the Board's Regulations.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)*

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Since the purpose of this action is to promulgate regulations mandating the successful completion of a business class, approved by the Board for Contractors, as a prerequisite for licensure as a contractor in Virginia, all substantive changes involve the identification of the new requirement and the logistical implementation of the approval process for education providers. The entry portion of the regulations (Part II) has been amended in order to add the prelicense education requirement to the applicable sections for each of the three license classes.

Prior to the 2006 amendment to Title 54.1 of the Code of Virginia, there were no specific education requirements for businesses applying for contractor licenses. The addition of a pre-license education requirement to the current eligibility criteria necessitates a new portion of the regulations in order to lay the logistical groundwork for the approval of courses, registration and reporting of students and other requirements.

## Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

*If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.*

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1) Since January 2003, the Board has adjudicated nearly 2000 disciplinary cases, with over 1900 of those cases involving disciplinary action against businesses holding a contractor license. As a result of those cases the Board has levied \$4.2 million in fines, revoked 618 licenses, sent 1059 contractors to remedial education classes and reimbursed consumers over \$3 million from the Contractor Transaction Recovery Fund. The citizens filing complaints against and being harmed by these contractors were subject to deliberate fraud in only a small percentage of the cases, while over three-quarters of the sanctions levied by the Board involve violations that could have been prevented if the licensees had been provided with the knowledge of some basic business tools and their relationship to the Board for Contractors Regulations. The implementation of this requirement will likely result in a decrease in the number of complaints received against contractors who have been through the training, a significant advantage to the public, in that less consumers will be subject to financial harm.

2) The workload of the Board for Contractors continues to increase at a rapid pace. Since FY 2003 the board has increased the number of meetings held per year by 50%, to once a month. The increase in the workload has been mirrored by an increase in expenses, a result of more investigations, more hearings and a larger compliance caseload. Even a small decrease in the number of cases processed by the board or DPOR could result in a decrease in expenditures.

3) An increase in the knowledge base of the regulated community may result in more informative business decisions, which could lead to more successful businesses. Syllabuses of courses approved by the board after the promulgation of emergency regulations include a module on permitting and inspection requirements of local government, an area of concern reflected in disciplinary data. Educating contractors in the statewide permitting and inspection requirements set forth in the Virginia Uniform Statewide Building Code should result in a greater level of compliance with local requirements, a pleasant “side effect” for local governments.

The promulgation of these regulations poses no disadvantages to the public or the Commonwealth.

## Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are*

*no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

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There are no federal licensing or educational requirements for contractors, subsequently, the promulgation of these regulations will not be more restrictive than applicable federal standards.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

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There is no locality that would be particularly affected by these proposed regulations.

**Public participation**

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

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In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Eric Olson, Executive Director, c/o DPOR, 3600 W. Broad Street, Richmond, Virginia 23230, fax: (804) 367-2474, email: [contractor@dpor.virginia.gov](mailto:contractor@dpor.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

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**Board for Contractors**  
**Fiscal Impact of Proposed Regulation**

**Summary:**

This proposed regulatory change implements the pre-licensing education requirements mandated by the 2006 Session of the General Assembly (Chapters 454 and 475). The statutory requirements were implemented in emergency regulations promulgated on August 21, 2006, and will become permanent with the proposed regulations.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The board has no other source of income.

**Fiscal Impact:**

	FY 2007	FY 2008	FY2009	FY2010
Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Service Area	560 46	560 46	560 46	560 46

Impact of Regulatory Changes:				
One-Time Costs	0	0	0	0
Ongoing Costs	0	0	0	0
Total Fiscal Impact	0	0	0	0
FTE	0.00	0.00	0.00	0.00

**Description of Costs:**

**One-Time:** Funding for \$5,000 in one-time costs was added to the Department's FY07 appropriation based on the fiscal impact analysis for Senate Bill 72. No additional one-time costs are anticipated as a result of these proposed regulations.

**Ongoing:** One classified position and funding for ongoing costs of \$50,265 were added to the Department's FY07 appropriation based on the fiscal impact analysis of Senate Bill 72. No additional one-time costs are anticipated as a result of these proposed regulations.

**Cost to Localities:** No change anticipated.

**Description of Individuals, Businesses, or Other Entities Impacted:** First time applicants for licensure as a Class A, B, or C Contractor each year will be impacted. Applicants will be required to have

either the Designated Employee or a member of Responsible Management satisfy the pre-licensing education requirements.

**Estimated Number of Regulators:** Approximately 10,000 new applicants per year.

**Projected Cost to Regulators:** No change in licensing fees is anticipated as a result of these regulatory changes.

## Alternatives

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

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The provisions of Chapters 454 and 475 of the Acts of the General Assembly are explicit in outlining the new requirements and give little room for alternative proposals. The Board, however, has encouraged alternative methods of delivery, such as internet based and video conferenced classes, in an effort to make the required education class more accessible to applicants. After promulgation of the emergency regulations, the Board approved an internet based training program, which has been primarily accessed by individuals in locations that would likely incur travel and lodging expenses in order to utilize the closest provider. Alternative methods of delivery can save both time and money and be less burdensome to the applicants for licensure.

## Regulatory flexibility analysis

*Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

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In their development of this proposed regulatory package, the Board for Contractors reviewed regulations and procedures used by other regulatory boards that require pre-license education. Information obtained during those reviews was instrumental in the development of regulations that would be the least stringent from a standpoint of compliance and reporting. Since the promulgation of the emergency regulations, the Board has worked with education providers to ensure that attendance information is provided quickly, accurately and electronically in order to minimize any reporting requirements from applicants for licensure. The Board has carefully

considered the issue of the burden to the providers of meeting reporting deadlines against the burden to applicants that are not able to work as contractors until their licenses have been issued and have established reporting requirements that are fair to both parties.

**Public comment**

*Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.*

There were no public comments received during the NOIRA comment period.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

It is not anticipated that these proposed regulations will have any affect on the institution of the family or family stability in Virginia.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
18 VAC 50-22-40		Lists requirements for entry as a Class C contractor.	Amended to include paragraph (F) which adds the requirement of pre-license education. Required by Chapters 454 and 475 of the Acts of the General Assembly.
18 VAC 50-22-50		Lists requirements for entry as a Class B contractor.	Amended to include paragraph (H) which adds the requirement of pre-license education. Required by Chapters 454 and

			475 of the Acts of the General Assembly.
18 VAC 50-22-60		Lists requirements for entry as a Class A contractor.	Amended to include paragraph (H) which adds the requirement of pre-license education. Required by Chapters 454 and 475 of the Acts of the General Assembly.
	18 VAC 50-22-300		Adds new Part VI (Pre-license Education) to the regulations. This first section to the new part provides that all pre-license education courses must be approved by the Board for Contractors (The Board), be at least eight hours long and cover business principles addressed in the standards of conduct or other sections of the regulations dealing with continued licensing. The "Prohibited Acts" set forth in 18 VAC 50-22-260.B of the regulations contain a number of "business" related issues that are common violations in disciplinary cases brought before the Board. Since 2003, more than 66% of the regulatory violations adjudicated by the board include items that could be easily identified in pre-license education courses. Violations for failure to include required information in a contract, essential for both regulant and consumer protection, occur in nearly 50% of all cases. Other violations involve record keeping, properly amending contracts, use of unlicensed subcontractors, the misapplication of funds paid by a consumer, failure to obtain building permits and other related activities. A reduction of 25% of those violations, a reasonable expectation from the implementation of pre-license education, would reduce the Board's disciplinary caseload by 100 cases per year. That would result in a reduction of one to two board meetings per year with a direct cost savings of about \$5000. Additionally, Virginia consumers would benefit from experiencing business transactions that adhered to the Board's standards.
	18 VAC 50-22-310		Identifies the information that must be included in an application for approval sent to the Board for Contractor from a prospective course provider. This information is primarily demographic and used to maintain the approved education provider database. Other information is gathered to set a record keeping baseline to ensure that the course is presented as approved.  Requirements are also established for record keeping by the approved provider. This is essential to ensure proper documentation and validation of individuals who have completed the course.

	18 VAC 50-22-320		<p>Sets forth the requirement that providers must notify the Board of course completion in an electronic format within a mandated period of time. Electronic reporting is a well established method of transmittal used by the Board for examination results and by other regulatory boards for the reporting of pre-license and continuing education.</p> <p>The seven day time requirement is also used by other regulatory boards. It is essential to establish a time requirement to ensure that information is received in a timely basis. Failure to receive information in a timely manner will result in a delay in the application review time, which could harm the applicant.</p>
	18 VAC 50-22-330		<p>Establishes the requirement that all course providers must ensure that certificates of approval be available at the location a course is taught. This provides another layer of protection for the licensee who, in this particular instance is a consumer, to ensure that the course he is about to take has actually been approved by the Board.</p>
	18 VAC 50-22-340		<p>Requires that any changes to the information provided to the Board that resulted in the approval of the course must be reported to the Board within a specified period of time.</p>
	18 VAC 50-22-350		<p>Establishes that the Board may deny an application for approval of a provider or withdraw approval of an existing provider for cause. These causes include instances where a provider advertises fraudulently, provides false information or offers a course that no longer meets the standards set by the Board.</p>